

### **REMARKS**

Claims 1-7, 9-25, 27-35, 49-57, 59-72, 74-95, and 97-130 are pending.

For the reasons discussed below, Applicants hereby amend Claims 123 and 130.

#### **I. Rejection of Claims 123-130 under 35 U.S.C. § 112 ¶ 2**

At page 3 of the Office Action, the Examiner has rejected Claims 123-130 under 35 U.S.C. § 112 ¶ 2 as “being indefinite for failing to particularly point out and distinctly claim the subject-matter which applicant regards as the invention.”

The Examiner states that Claim 123, step “e.” contains phrasing that is confusing. The Examiner further indicates that, for purposes of examination, he has understood the phrase:

“e. designating, on the basis of the processed bid information, at least two Providers of the plurality of energy Providers to supply at least a portion of the electric power or natural gas needed by the at least one end user” as including “, each of said at least two Providers” immediately following “plurality of energy Providers” in Claim 123, step “e.” The Examiner has correctly understood the phrasing in Claim 123, step “e.” To minimize any possible confusion in the future, Applicants have amended herein Claims 123 and 130 in this regard.

For at least the reasons discussed above, Applicants respectfully request withdrawal of all § 112 rejections and allowance of all pending claims.

**II. Rejection of Independent Claims 1, 20, 49, 68, 86, 102, and 113 under 35 U.S.C. § 103(a)**

At pages 4-6 of the Office Action, the Examiner has rejected Claims 1, 20, 49, 68, 86, 102, and 113 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,677,552 ("Sibley") in view of U.S. Patent No. 6,026,383 ("Ausubel"). Applicants respectfully traverse this rejection of Claims 1, 20, 49, 68, 86, 102, and 113 for at least the reasons discussed below.

Applicants respectfully submit that Sibley in view of Ausubel does not disclose or suggest all of the claim limitations of Claims 1, 20, 49, 68, 86, 102, and 113. See M.P.E.P. § 2143.03 ("To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art").

Sibley describes a method and system enabling traders who are members of one local commodity exchange to communicate and trade with other traders who are members of a different local commodity exchange via a satellite telecommunications network, using a central host computer to facilitate the routing and storing of trading information. Sibley summarizes this method and system as follows: "Thus, the user member of any one local exchange can communicate directly with the central exchange host to obtain market information relative to any member exchange. He can also make bids and offers to any other local exchange user member through his own local exchange which communicates through the satellite system with the central exchange host and with the other selected exchange." Sibley at column 1, lines 59-66 and, more generally, column 1, line 46 to column 2, line 40.

Sibley describes transactions being initiated by one trader entering his "position" (e.g., his bid to buy or his offer to sell a certain commodity) at his remote computer terminal. This bid or offer is then transmitted via satellite to the central exchange host computer and routed to the other participating local commodity exchanges. Upon acceptance of this bid or offer by another trader on any of these local exchanges, the central exchange host computer transmits a transaction confirmation to the two traders involved in this completed transaction as well as to all of the participating members of the two local exchanges on which the two traders involved in this transaction are members. See Sibley at column 7, lines 7-29.

The following example illustrates some of the differences between the Sibley disclosure and the processes to which Claims 1, 20, 49, 68, 86, 102, and 113 of the pending Application are limited. "Trader A" on one local commodity exchange enters into the Sibley system his offer to sell 10,000 barrels of oil at \$128 per barrel. This offer to sell is transmitted via the central exchange host computer to other participating traders on other local commodity exchanges. "Trader B" on one of these other local exchanges sees Trader A's offer to sell and enters his acceptance of Trader A's offer. That acceptance is then transmitted via the central exchange host computer to Trader A. Notice of the completed transaction is also transmitted by the central exchange host computer to all participating members of the two local commodity exchanges in which Trader A and Trader B are members. Applicants respectfully submit that the central exchange host computer of Sibley has no role in determining

whether Trader B (or Traders C, D, E or F, for that matter) will be the counterparty who first accepts Trader A's offer.

Nothing in Sibley would suggest to a person having ordinary skill in the art that the central exchange host computer performs any functions that can be reasonably construed as "determining a winner" or, as the Examiner states in the accompanying parenthetical in the Office Action, that "participating in the auction indicates [a] 'designating' step." The central exchange host computer (i) enables the communication of bids and offers between traders on different local commodity exchanges, and (ii) serves as the device through which completed trades are confirmed to the two traders participating as buyer and seller in each transaction and reported to the other traders on the respective exchanges.

Sibley does not teach an auction method and system of the type recited in any of Claims 1, 20, 49, 68, 86, 102, and 113. Instead, Sibley describes a communications conduit linking different local commodity exchanges to each other, with the capability to facilitate trading transactions between traders operating on different exchanges rather than only on the same exchange. Absent this inter-exchange communications and transactions capability, the method and system described in Sibley would appear to be very similar to the operations of most established local commodity exchanges in the world.

Applicants submit that Claims 1, 20, 49, 68, 86, 102, and 113 are patentable for at least the reason that Sibley in view of Ausubel fails to disclose or suggest all recited claim limitations of Claims 1, 20, 49, 68, 86, 102, and 113.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of Claims 1, 20, 49, 68, 86, 102, and 113 and allow these Claims to proceed to issuance.

At page 5 of the Office Action, the Examiner further states that it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Sibley to expand "bids for providing energy" to include bids to provide electric power or natural gas. The Examiner points out that, while Sibley does not teach bidding for providing electric power or natural gas, Sibley does teach bidding for providing oil and gasoline.<sup>1</sup> However, there are meaningful distinctions between electric power or natural gas and oil or gasoline for the purposes of Claims 1, 20, 49, 68, 86, 102, and 113 and Applicants have thus recited Claims 1, 20, 49, 68, 86, 102, and 113 to state "consisting of electric power or natural gas" so as to acknowledge such distinctions. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of Claims 1, 20, 49, 68, 86, 102, and 113 and allow these Claims to proceed to issuance.

Ausubel (U.S. Patent No. 6,026,383) discloses a method and system in which participants are bidders bidding to buy or sell multiple items in specific quantities and at specific prices, with such multiple items being auctioned at the same time. Participants in Ausubel may be provided bidding history information about other participants' bidding activities (for example, bidder identities, the activity levels of all bidders, and/or the entire history of all bids). In the Office Action the Examiner sets forth his grounds for rejection of Claims 1, 20, 49, 68, 86, 102, and 113:

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<sup>1</sup> Sibley also discloses propane.

“Ausubel teaches a computer-implemented method and system for automated bidding process, including transmitting bidding history information (*historical energy usage data*) associated with the at least one participant of the trade exchange to at least a portion of other participants of the trade exchange, wherein said bidding history information includes quantities demanded by the at least one participant in prior rounds (C. 6, L. 5-6, 20-24, 29-43; C. 9, L. 22-28).

“It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sibley to include transmitting historical energy usage data associated with the at least one reseller, or with the at least one customer, to at least a portion of the plurality of energy providers, as disclosed in Ausubel, because it would advantageously allow the participants to estimate each other’s demand or supply curve which is needed for making trading decisions, as specifically stated in Ausubel (C. 3, L. 53-65). Also, Ausubel points out that transmitting said information would cause bidders to bid more aggressively than otherwise (C. 2, L. 35-36).”

Applicants respectfully but strongly disagree with the Examiner’s reasoning. Applicants do not agree that the reference in Ausubel to “bidding history information” includes “historical energy usage data.” Applicants also do not agree that the references above

to “as disclosed in Ausubel” and then “as specifically stated in Ausubel” are supported by the disclosure in Ausubel.

First, the Examiner refers in the Office Action to “bidding history information” as including “quantities demanded by the at least one participant in prior rounds.” The passages in Ausubel the Examiner cites for support (C. 6, L. 5-6, 20-24, 29-43; and C. 9, L. 22-28) indicate that “bidding history information” means information about bids made prior to the then-current round of bidding. In Ausubel, at C. 6, L. 29-43, “bidding history information” is described as follows:

“The bid history is information relating to the bids submitted by bidders in prior rounds. For example, this may or may not include each of the following:

1. The disaggregated quantities demanded by each bidder in prior rounds, where each bidder is identified by name. This allows each bidder to know each bid made during the auction and who made the bid.
2. The disaggregated quantities demanded by each bidder in prior rounds, where each bidder is identified only by a confidential bidder identification number. This allows each bidder to know each bid made during the auction and to track the bids of individual bidders, but prevents each bidder’s actual identity from being known.
3. The aggregate quantity demanded by all bidders in prior rounds.”

In addition, the disclosure in Ausubel at C. 9, L. 22-28 cited by the Examiner supplements an understanding of the scope of “bidding history information” as follows:

“Optionally, the BIP [bid information processor or central server] may also provide additional bidding history information, including but not restricted to: the identity of the bidder associated with the high bid on each object, or a secret bidder identification number associated with the high bid on each object; the activity levels of all bidders, in either aggregated or disaggregated form; or the entire history of prior bids.” (explanatory parenthetical added by Applicants)

The “quantities demanded” as cited in the passages above from Ausubel are the specific amounts or number of items which a bidder seeks to buy in the auction. The “bidding history information” of one or more bidders transmitted by the central server in Ausubel gives valuable information to the other bidders who are trading in the same market. This trading information has nothing to do with actual usage of a commodity (if any), in the past or in the future.

In addition, the Ausubel method and system is an auction for specific quantities of an item (or series of items) at specific prices. Like Sibley, Ausubel is not an auction process based on the amount of the commodity needed for future use by the buyer – i.e., an auction in which, as described in the pending Application, the primary purpose of transmitting historical energy usage data to prospective bidding suppliers is to assist each bidding supplier in estimating how much energy this bidding supplier may, in fact, be required to supply to a buyer if the bidding supplier is ultimately designated as one of the winning suppliers. In the method and system described in the pending Application, the exact quantity of energy that the winning providers have committed to supply to the buyer, as a result of the auction process, will not be known in many cases



until after the specific future time interval (for which the winning providers are committed to supply energy to the buyer) has expired – which can be months or even years after the auction takes place. Only then will a winning provider in such cases know for certain how much energy it had committed, at the time of the auction, to supply to the buyer.

Second, the demand and supply curves described in Ausubel are not related to historical energy usage, but rather refer to (i) a buyer setting different prices at which he is willing to buy different quantities of the items being auctioned (creating a demand curve), and (ii) a seller setting different prices at which he is willing to sell different quantities of the items being auctioned (creating a supply curve). See Ausubel, C. 3, L. 43 – C. 4, L. 10. In particular, please refer to Ausubel's definitions of "demand curve" and "contingent demand curve" at Ausubel, C. 8, L. 1-14:

"A demand curve is a table of the quantity which a bidder desires at each possible price that may be named in the course of the auction. ... Contingent demand curves allow a bidder to vary his demand curve based on the bidding history received from the bidding information processor. For example, the quantity which a bidder demands at a particular price may depend on the quantity which another bidder demanded at a previous price."

The use of the demand curve in Ausubel is a technique to enable automated bidding by a buyer during the course of the auction, without revealing more to the auctioneer (or to other bidders) about that buyer's bidding strategy than is

absolutely necessary - especially, for example, his willingness to pay higher prices than he may have bid so far in the auction. In general, see Ausubel at C. 3, L. 43 – C. 4, L. 10 and C. 8, L. 1 – C. 9, L. 2. The “demand curve” described in Ausubel has nothing to do with the usage of a commodity, whether in the past or in the future.

Third, the Examiner relies on Ausubel to support his statement that transmitting historical energy usage data “... would advantageously allow the participants to estimate each other’s demand or supply curve which is needed to make trading decisions, as specifically stated in Ausubel (C. 3, L. 53-65).” Applicants respectfully suggest that this reliance by the Examiner is misplaced. The cited passage from Ausubel (C. 3, L. 53-65) refers to the auctioneer accepting from a bidder “... a ‘sealed bid’ consisting of a demand or supply curve or a set of contingent demand or supply curves, with the advantage that the auctioneer only gets to observe the portion of the bidder’s demand or supply curve which is needed to decide the outcome (i.e., each bidder’s ultimate quantity and payment) of the auction.” For more context, see Ausubel, C. 3, L. 43 - C. 4, L. 10.

Reading the entirety of the paragraph in Ausubel in which the passage cited by the Examiner appears (see C. 3, L. 53 – C. 4, L. 10) makes it clear that a bidder’s demand or supply curve is submitted as part of a “sealed bid” by that bidder, meaning none of the other bidders is permitted to see the contents of that bid (including, of course, any portion of the first bidder’s demand or supply curve). Only the auctioneer is permitted to see the contents of the sealed bid, but even the auctioneer “only gets to observe the portion of the bidder’s demand or supply curve which is needed to decide

the outcome ... of the auction.” According to Ausubel (C. 3, L. 65 – C. 4, L. 5), “the unused portion of the demand or supply curve (e.g., the portion above the market-clearing price, and for contingencies which are not reached) never gets transmitted to the auctioneer .... Thus, the confidentiality of the unused part of the demand or supply curve is preserved.” As a result, the other bidders never even get to see the demand or supply curve submitted by the first bidder.

Fourth, the “trading decisions” to which the Examiner refers in his reasoning for rejection are, in fact, the decisions made in Ausubel at the level of the auctioneer, not at the level of the participating bidders (C. 3, L. 53-65). It should also be pointed out that it would be highly unusual (and generally very disadvantageous) for a trader wishing to buy a commodity to reveal at the outset to other traders, from at least one of whom he plans to buy that commodity, the various prices he would be willing to pay for different quantities of that commodity. The trading expertise of the buyer would be compromised to the detriment of the buyer and to the great advantage of the other traders. Ausubel does not suggest this approach – in fact, the method and system described in Ausubel attempts to protect the buying bidder from this disadvantageous result (C. 3, L. 65 – C. 4, L. 10). As a much more workable alternative, the Ausubel method and system describes making bidding history information available (that is, information on the bids to buy or sell already made by the participating bidders) (C. 9, L. 22-28). This bidding history information, however, has nothing to do with actual usage of the commodity (if any), in the past or in the future, by a buying bidder.

Fifth, the Ausubel method and system is an auction for specific quantities of an item (or series of items) at specific prices. Like Sibley, Ausubel is not an auction process based on the amount of the commodity needed for future use by the buyer – i.e., an auction in which, as described in the pending Application, the primary purpose of transmitting historical energy usage data to prospective bidding suppliers is to assist each bidder in estimating how much energy this bidder may, in fact, be required to supply to a buyer if the bidder is ultimately designated as one of the winning suppliers. Of course, in most cases historical energy usage data is only a guide, not a guarantee, that future energy needs (which one or more winning bidders will have committed to supply) will parallel the hourly, daily, monthly and seasonal usage that the historical usage data indicates.

Applicants wish to point out that Claims 18, 32, 67, 93, 111, 121, and 129 refer to periodic reports of energy usage by the buyer(s) (e.g., one or more resellers or end users, including end users who are customers of a reseller) being made available to at least one of the designated suppliers - but these periodic reports would show energy usage for periods which begin after the auction has concluded (days, months, or even years after) and the supplier(s) have, in fact, started supplying electric power or natural gas to the buyer(s) in accord with the results of the auction. Ausubel contains no disclosure even remotely similar to this claimed subject matter in the pending Application.

Applicants respectfully traverse the Examiner's assertion that the disclosure of Ausubel teaches transmitting "historical energy usage data" and/or "periodic usage reports."

The Examiner has cited the decisions in KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 USPQ2d 1385 (2007) ("KSR") and Sakraida v. AG Pro, Inc., 425 U.S. 273 (1976) as well as Ex parte Mary Smith, --USPQ2d--, slip op. at 20 (Bd. Pat. App. & Interf. June 25, 2007) to support the Examiner's rejection of independent Claims 1, 20, 49, 68, 86, 102, and 113. The Examiner invokes these decisions after stating the following: "Furthermore, in this case [that is, the pending Application Serial No. 10/633,937], each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus such a combination would have yielded predictable results." Applicants respectfully but strongly disagree. Before a rejection for obviousness can be sustained under the above court decisions, a threshold inquiry must be satisfied to the effect that the applicable prior art, if combined, would disclose or suggest all of the elements in the claim limitations of the pending Application. For the reasons Applicants have stated above, Applicants respectfully submit that Sibley, when combined with Ausubel, does not disclose (or at least suggest) all of the elements of the claim limitations in pending Claims 1, 20, 49, 68, 86, 102, or 113. As a result, the question of whether, in the case of the pending Application, "each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art" is moot.

Applicants respectfully request that, in the event the Examiner does not accept Applicants' arguments in this regard, that Applicants be given a further opportunity to discuss with the Examiner the implications of the application of the KSR decision (and the related court decisions cited above) to the pending Application. In general, however, Applicants respectfully submit that the combination of "each of the elements of the cited references combined by Examiner" (in Sibley and Ausubel) may or may not "perform the same function when combined as it does in the prior art," but the predictable result that such a combination yields is not the invention disclosed in the pending Application. Further, though Applicants agree that the KSR decision obviates the lower court's previous requirement that a teaching, suggestion, or motivation be shown to support a combination of two or more prior art references, the KSR decision does suggest that the teaching, suggestion, or motivation approach can be a helpful tool when determining whether such a combination of references is reasonable. For the reasons Applicants have stated above, Applicants respectfully submit that no teaching, suggestion, or motivation has been shown to support a combination of Ausubel with Sibley.

For at least the reasons stated above, Applicants respectfully traverse the rejection of Claims 1, 20, 49, 68, 86, 102, and 113 in view of the additional grounds supporting patentability for these Claims. For these reasons, Applicants respectfully ask that the rejection of Claims 1, 20, 48, 68, 86, 102, and 113 be withdrawn and request that these Claims be allowed to issue.

**III. Rejection of Independent Claims 123 and 130 under 35 U.S.C. § 103(a)**

At pages 8-10 of the Office Action, the Examiner has rejected independent Claims 123 and 130 under 35 U.S.C. § 103(a) as unpatentable over Sibley in view of Ausubel and, further, in view of U.S. Patent No. 5,136,501 ("Silverman"). Applicants respectfully traverse these rejections.

With respect to the Examiner's discussion of the teachings of Sibley in view of Ausubel (appearing on pages 8-10 of the Office Action), the Applicants respectfully submit that independent Claims 123 and 130 are patentable for at least the reasons set forth above in regard to independent Claims 1, 20, 49, 68, 86, 102, and 113, and the Applicants incorporate by reference the discussion of those reasons into this discussion of Claims 123 and 130.

With respect to the Examiner's discussion of the teachings of Sibley in view of Ausubel and, further, in view of Silverman, the Applicants respectfully suggest that the Examiner's reliance on Silverman to support the rejection of independent Claims 123 and 130 is misplaced.

Silverman (U.S. Patent No. 5,136,501) describes a matching system for trading instruments in which bids are automatically matched against offers for given trading instruments in order to complete trades for the given trading instruments, and in which real time prices are subject to real time credit considerations, such as a counterparty credit limit between potential parties to a matching transaction. See Silverman at C. 3, L. 16-38.

The matching system in Silverman maintains a central database “consisting of all of the trading instruments available for trade, credit information with respect to potential counterparties ..., and the bids and offers that are present throughout the system ....” See Silverman at C. 2, L. 17-24. These bids and offers comprise the “order book” for the system.

In the Office Action on page 10, the Examiner sets forth his grounds for rejection of independent Claims 123 and 130 in reliance on the teaching of Silverman:

“Silverman et al. teaches a computer-implemented method and system for automated bidding process for commodities market, said method disclosing accepting a matching (by price) bid, and if order is not filled, continuing to accept multiple matching bids from multiple bidders until the order is filled (C. 21, L. 9-29). Furthermore, “accepting multiple matching bids from multiple bidders *until the order is filled*” suggests “100% power needed” feature.

Applicants respectfully disagree with the Examiner’s reasoning with respect to the teaching of Silverman, as the Examiner applies it to the pending Application. In particular, the Applicants disagree that “ ‘accepting multiple matching bids from multiple bidders *until the order is filled*’ suggest the ‘100% power needed feature’ claimed by the Applicants in independent Claims 123 and 130.

The Silverman matching system describes four different order types used to buy or sell trading instruments: “Bids” (to buy), “Offers” (to sell), “Takes” (to buy),



and “Hits” (to sell). Bid and Offer orders typically remain available for matching transactions in the system’s order book until they are explicitly cancelled (or, of course, until they are matched up with one or more corresponding orders, resulting in a completed trade). “Take” and “Hit” orders, on the other hand, are typically “fill-or-kill” orders, meaning that they must be fully or partially filled at the time they are presented to the system – if no matching orders are available at that time, these fill-or-kill orders are cancelled (resulting in the removal of these orders from the system’s order book). See Silverman at C. 20, L. 58 – C. 21, L. 29.

For example, if a Take order (an order to buy, on a fill-or-kill basis, a specified quantity of a certain trading instrument at a specific price) is presented to the Silverman system, the system will look in its order book for one or more matching Offers (to sell) in an attempt to find the specific quantity of the trading instrument sought by the Take order. Assuming that Offers and Hits are available with selling prices at or below the limit price set in the Take order, the system will match the orders on both sides of the transaction until the Take order is filled – that is, until the specific quantity set forth in the Take order is sold to the party entering the Take order in the system, all at or under the specified limit price set in the Take order. The Silverman system allows such a Take order to be filled by multiple Offer or Hit orders, until the specific quantity set in the Take order is filled (or the Take order’s specified limit price is reached). See Silverman at C. 20, L. 58 – C. 21, L. 29.

In Silverman, an order matching system attempts to match up orders to buy securities (and other trading instruments) with orders to sell. In Silverman, these orders each set specific quantities at specific prices to buy or sell. In the event that an order to buy specifies a quantity larger than is available from any one order to sell, the system in Silverman can try to make a match by looking at more than one order to sell in the system's order book in an attempt to satisfy the system participant who presented the large order to buy. If the system is able to find multiple offers to sell in the system's order book that result in a combined quantity equal to the specific quantity set in the order to buy, the system will have filled the large order to buy, but the system in Silverman is still just filling an order to buy a specific quantity (at or below a specific limit price).

In contrast, bidding under the auction method and system of Claims 123 and 130 of the pending Application is based on the future energy needs of one or more end users for a specific future time interval (e.g., one month, 12 months, three years, etc.). To give potential suppliers more precise data on which to base their bids, such suppliers can be provided access to historical energy usage data associated with these end users. With access to this historical energy usage data, potential suppliers have a reasonable basis on which to estimate the likely future energy needs of the applicable end users (or group of end users) – and, therefore, a reasonable basis on which to make their respective bids.

Within the scope of independent Claims 123 and 130, the exact quantity of energy that the winning providers have committed to supply to the buyer, as a result of

the auction process, will not be known in many cases until after the specific future time interval (for which the winning providers are committed to supply energy to the buyer) has expired – which can be months or even years after the auction takes place. Only then will a winning provider in such cases know for certain how much energy it had committed, at the time of the auction, to supply to the buyer.

The Examiner has again cited the decisions in KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 USPQ2d 1385 (2007) (“KSR”) and Sakraida v. AG Pro, Inc., 425 U.S. 273 (1976) as well as Ex parte Mary Smith, --USPQ2d--, slip op. at 20 (Bd. Pat. App. & Interf. June 25, 2007) to support the Examiner’s rejection of independent Claims 123 and 130. The Examiner invokes these decisions after stating the following: “In this case (that is, the pending Application Serial No. 10/633,937), each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art” (*parenthetical added by Applicants*). Applicants respectfully but strongly disagree. Before a rejection for obviousness can be sustained under the above court decisions, a threshold inquiry must be satisfied to the effect that the applicable prior art, if combined, would disclose or suggest all of the elements in the claim limitations of the pending Application. For the reasons Applicants have stated above, Applicants respectfully submit that Sibley, when combined with Ausubel and Silverman, does not disclose or suggest all of the elements of the claim limitations in pending independent Claims 123 and 130. As a result, the question of whether, in the case of the pending Application, “each of the elements of the cited

references combined by the Examiner performs the same function when combined as it does in the prior art” is moot.

Applicants respectfully request that, in the event the Examiner does not accept Applicants’ arguments in this regard, that Applicants be given a further opportunity to discuss with the Examiner the implications of the application of the KSR decision (and the related court decisions cited above) to the pending Application. In general, however, Applicants respectfully submit that the combination of “each of the elements of the cited references combined by Examiner” (in Sibley and Ausubel) may or may not “perform the same function when combined as it does in the prior art,” but the predictable result that such a combination yields is not the invention disclosed in the pending Application. Further, though Applicants agree that the KSR decision obviates the lower court’s previous requirement that a teaching, suggestion, or motivation be shown to support a combination of two or more prior art references, the KSR decision does suggest that the teaching, suggestion, or motivation approach can be a helpful tool when determining whether such a combination of references is reasonable. For the reasons Applicants have stated above, Applicants respectfully submit that no teaching, suggestion, or motivation has been shown to support a combination of Sibley with Ausubel and with Silverman.

Applicants respectfully submit that independent Claims 123 and 130 are patentable for at least the reasons set forth above (including, without limitation, the matter incorporated above by reference with regard to the discussion regarding independent Claims 1, 20, 49, 68, 86, 102, and 113). Accordingly, Applicants

respectfully request that the Examiner withdraw the rejection of independent Claims 123 and 130 and allow these Claims to proceed to issuance.

**IV. The Dependent Claims - Claims 2-7, 9-19, 21-25, 27-35, 50-57, 59-67, 69-72, 74-85, 87-95, 97-101, 103-112, 114-122, and 124-129**

Applicants believe that independent Claims 1, 20, 49, 68, 86, 102, 113, 123, and 130 are patentable for at least the reasons stated above. Applicants, therefore, believe that each of the dependent Claims 2-7, 9-19, 21-25, 27-35, 50-57, 59-67, 69-72, 74-85, 87-95, 97-101, 103-112, 114-122, and 124-129 is patentable at least by virtue of its dependency on the respective patentable base claim, i.e., independent Claims 1, 20, 49, 68, 86, 102, 113, 123, and 130. Accordingly, Applicants respectfully request withdrawal of all rejections to dependent Claims 2-7, 9-19, 21-25, 27-35, 50-57, 59-67, 69-72, 74-85, 87-95, 97-101, 103-112, 114-122, and 124-129 and the allowance of these claims.

In addition, Applicants believe that each of the dependent claims 2-7, 9-19, 21-25, 27-35, 50-57, 59-67, 69-72, 74-85, 87-95, 97-101, 103-112, 114-122, and 124-129 are patentable by virtue of the elements recited in such claims and respectfully traverse the rejections made to each respective dependent claim. Applicants submit the following as examples of these additional grounds for patentability (which are not intended to be exhaustive of all arguments in support of patentability of such dependent claims) and respectfully request allowance of all pending dependent claims.

**a.     *Rejection of Dependent Claims 2, 21, 50, 108, and 109 under 35 U.S.C. § 103(a)***

At page 6 of the Office Action, the Examiner has rejected Claims 2, 21, 50, 108, and 109 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. Applicants respectfully traverse this rejection of Claims 2, 21, 50, 108, and 109 in view of at least an additional ground supporting patentability for Claims 2, 21, 50, 108, and 109.

Sibley refers to user members of the various local commodity exchanges utilizing the central exchange host to trade with user members of other local commodity exchanges. The “users” in Sibley are traders ready to buy or sell the commodities trading on the various local commodity exchanges, typically with no intention to use or consume the commodities they trade. However, the “at least one reseller or the at least one customer” of Claims 2, 21, 50, 108, and 109 includes the persons or entities (“end users”) who will, in fact, use or consume electric power or natural gas at one or more end-user facilities.

For at least this additional ground, Applicants respectfully submit that Claims 2, 21, 50, 108, and 109 are patentable. Applicants respectfully request withdrawal of the rejection to Claims 2, 21, 50, 108, and 109 and request allowance thereof.

**b.     *Rejection of Dependent Claims 3, 22, 51, and 119 under 35 U.S.C. § 103(a)***

At page 6 of the Office Action, the Examiner has rejected Claims 3, 22, 51, and 119 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. However,

Applicants believe that dependent Claims 2, 21, 50, and 113 are patentable for at least the reasons Applicants have provided herein in response to the Examiner's rejection of Claims 2, 21, 50, and 113. Because Claims 3, 22, 51, and 119 depend on Claims 2, 21, 50, and 113, Applicants respectfully submit that Claims 3, 22, 51, and 119 are each patentable at least by virtue of their dependency on patentable claims 2, 21, 50, and 113, respectively. For at least this reason, Applicants respectfully request withdrawal of the rejection to dependent Claims 3, 22, 51, and 119 and request allowance of same.

***c. Rejection of Dependent Claims 13, 16, 29, 62, 65, 78, and 80 under 35 U.S.C. § 103(a)***

At page 6 of the Office Action, the Examiner has rejected Claims 13, 16, 29, 62, 65, 78, and 80 under 35 U.S.C. § 103(a) as being unpatentable over Sibley. Applicants respectfully traverse this rejection of Claims 13, 16, 29, 62, 65, 78, and 80 in view of at least an additional ground supporting patentability for these Claims.

First, the Examiner suggests that "conducting a trade of energy via the auction indicates ability to supply the contracted volume of energy." From this statement, it appears that the Examiner has equated the type of transactions described in Sibley in view of Ausubel, and the Sibley method and system enabling such transactions, to the type of transactions enabled by the method and system described in the pending Application. However, the transactions described in Sibley are typical of an established commodity exchange. Trades are entered into by the user members (traders) in order to buy or sell a specific quantity of a particular commodity at a specific price. In every completed trade in the Sibley method and system, the seller is

contractually committed to supply the buyer with the specific quantity of the desired commodity – no more, no less. In order to accumulate large quantities of a particular commodity, a buyer may have to enter into several trades, each with its own specific price, volume, delivery and settlement terms.

The subject matter of Claims 1, 20, 49, 68, 86, 102, and 113 relates to an energy auction process enabling the procurement of electric power or natural gas by or on behalf of at least one buyer (for example, one or more resellers or end users, including end users who are customers of a reseller). Bidding under this auction method and system is based on the future energy needs of one or more of these buyers (if the buyer is a reseller, then on the future energy needs of some or all of the end user customers of this reseller) for a specific future time interval (e.g., one month, 12 months, three years, etc.). To give potential suppliers more precise data on which to base their bids, such suppliers can be provided access to historical energy usage data associated with these buyers (again, if the buyer is a reseller, then the historical energy usage data associated with some or all of the end user customers of this reseller). With access to this historical energy usage data, potential suppliers have a reasonable basis on which to estimate the likely future energy needs of the applicable end users (or group of end users) – and, therefore, a reasonable basis on which to make their respective bids. This is very different from the method and system disclosed in Sibley, where a seller agrees to sell to the buyer, and the buyer agrees to buy from that seller, a specific amount of a commodity (e.g., 10,000 barrels of crude oil at \$128 per barrel), regardless of the buyer's actual future usage.



Within the scope of independent Claims 1, 20, 49, 68, 86, 102, and 113 the exact quantity of energy that the winning providers have committed to supply to the buyer, as a result of the auction process, will not be known in many cases until after the specific future time interval (for which the winning providers are committed to supply energy to the buyer) has expired – which can be months or even years after the auction takes place. Only then will a winning provider in such cases know for certain how much energy it had committed, at the time of the auction, to supply to the buyer.

Second, Applicants respectfully submit that Sibley in view of Ausubel does not disclose or suggest the feature of “at least one standard unit or block of power or natural gas” as such is recited in dependent Claims 13, 29, 62 and 78. Dependent Claims 13, 29, 62 and 78 refer to an auction process in which bidders are able to submit bids to provide “at least one standard unit or block of power or natural gas.” In addition, Claims 13, 29, 62 and 78 depend on Claims 1, 20, 49, and 68, respectively, each of which recite an auction process based on the future energy needs of at least one buyer (e.g., one or more resellers or end users, including end users who are customers of a reseller). Because Claims 13, 29, 62, and 78 depend on independent Claims 1, 20, 49, and 68, the Applicants respectfully submit that Claims 13, 29, 62, and 78 are each patentable at least by virtue of their dependency on patentable Claims 1, 20, 49, and 68, respectively.

Third, dependent Claims 16 and 65 refer to an auction process in which at least a first designated provider is to supply a specific quantity or block of electric power or natural gas. Because Claims 16 and 65 depend on independent Claims 1 and 49,

Applicants respectfully submit that Claims 16 and 65 are each patentable at least by virtue of their dependency on patentable Claims 1 and 49, respectively.

With respect to Claim 80, please refer to the remarks below concerning the Examiner's rejection of dependent Claims 7, 56 and 71.

For at least the reasons stated above (and below with respect to Claim 80) Applicants respectfully traverse the Examiner's rejection of Claims 13, 16, 29, 62, 65, 78, and 80 in view of at least an additional ground supporting patentability for these Claims. Applicants respectfully request withdrawal of the rejection of these claims and request allowance thereof.

***d. Rejection of Dependent Claims 6, 15, 25, 31, 55, 64 and 90 under 35 U.S.C. § 103(a)***

At page 6 of the Office Action, the Examiner has rejected Claims 6, 15, 25, 31, 55, 64 and 90 under 35 U.S.C. § 103(a) as being unpatentable over Sibley in view of Ausubel. Applicants respectfully traverse this rejection of Claims 6, 15, 25, 31, 55, 64 and 90 in view of at least an additional ground supporting patentability for these Claims. More particularly, Applicants assert that Sibley (in view of Ausubel) does not disclose or suggest the "bid formulation requirements" feature of Claims 6, 15, 25, 31, 55, 64 and 90.

For the central exchange host in Sibley to facilitate trades between traders at different established commodity exchanges, the Sibley method and system must be structured to comply with all state and federal rules and regulations (including those of the U.S. Securities and Exchange Commission) governing trading activities on an

exchange, such as the legal rules and regulations pertaining to best execution, settlement practices, short sales, fraud prevention, etc. These rules and regulations generally apply to trading activities at all U.S.-based exchanges and are designed to protect the trading markets from fraudulent activities and unsound practices that would likely lead to a loss of confidence by the investing public in U.S. capital markets.

These state and federal rules and regulations are not particularly relevant to the “bid formulation requirements” of Claims 6, 15, 25, 31, 55, 64 and 90 (as well as Claim 70). The “bid formulation requirements” of Claims 6, 15, 25, 31, 55, 64 and 90 (as well as Claim 70) are flexible and customizable for each energy auction while, of course, just the opposite is true for the state and federal rules and regulations governing trading activities (including the SEC rules) – i.e., they are standardized as much as possible in order to apply broadly to any and all regulated transactions.

For at least the reasons stated above, Applicants respectfully traverse this rejection of Claims 6, 15, 25, 31, 55, 64 and 90 in view of at least an additional ground supporting patentability for these Claims. The Applicants respectfully request the withdrawal of the rejections for these claims and request allowance thereof.

***e. Rejection of Dependent Claims 7, 56, 70 and 71 under 35 U.S.C. § 103(a)***

At page 7 of the Office Action, the Examiner has rejected Claims 7, 56, 70 and 71 under 35 U.S.C. § 103(a) as being unpatentable over Sibley in view of Ausubel. Applicants respectfully traverse this rejection of Claims 7, 56, 70, and 71 in view of at least an additional ground supporting patentability for these Claims.

In the Sibley method and system, a selling trader offers to sell a specific amount of a specific commodity at a specific price, with no regard whatsoever to the future usage requirements of the buying trader.

However, in the energy auction process referred to in Claims 7, 56, 70, and 71, bidding by potential suppliers is based on the future energy needs of one or more buyers (e.g., one or more resellers or end users, including end users who are customers of a reseller). The bids referred to in Claims 7, 56, 70, and 71 indicate the quantity of electric power or natural gas the bidder is willing to offer to sell, with his bid based on the electric power or natural gas needed for use in the future by one or more buyers (e.g., one or more resellers or end users, including end users who are customers of a reseller). The bid formulation requirements specify the required elements for a bid to be considered valid including, for example, whether bids will be based on supplying all of an end user's energy needs during a specific future time interval or supplying only a portion of such needs (e.g., see the Application specification at page 22, line 488 to page 23, line 514). In many cases, the exact quantity of energy that the winning bidders have committed to supply to the buyer, as a result of the auction process, will not be known until after the specific future time interval has expired. This is very different than the basis on which bids to sell and offers to buy are made in Sibley (in view of Ausubel).

For at least the reasons stated above, Applicants respectfully traverse this rejection of Claims 7, 56, 70, and 71 in view of at least an additional ground supporting patentability for Claims 7, 56, 70, and 71.

***f. Rejection of Dependent Claims 10, 27, and 75 under 35 U.S.C. § 103(a)***

At page 7 of the Office Action, the Examiner has rejected Claims 10, 27 and 75 under 35 U.S.C. § 103(a) as being unpatentable over Sibley in view of Ausubel. Applicants respectfully traverse this rejection of Claims 10, 27 and 75 in view of at least an additional ground supporting patentability for Claims 10, 27 and 75. More particularly, Sibley (in view of Ausubel) does not disclose or suggest the “decision rules” feature of Claims 10, 27 and 75.

The so-called decision rules the Examiner cites in Sibley are rules designed to standardize all trading activities passing through Sibley’s central exchange host computer. The “decision rules” feature recited in Claims 10, 27 and 75 are rules designed to enable custom parameters to be imposed on the processing of the bids submitted by potential suppliers. These decision rules of Claims 10, 27 and 75 are applied by the auction moderator (or first control computer) as part of the process of designating winning bidders.

For at least the reasons stated above, Applicants respectfully traverse this rejection of Claims 10, 27 and 75 in view of at least this additional ground supporting patentability for these Claims.

***g. Rejection of Dependent Claims 17, 66 and 82 under 35 U.S.C. § 103(a)***

At page 7 of the Office Action, the Examiner has rejected Claims 17, 66 and 82 under 35 U.S.C. § 103(a) as being unpatentable over Sibley in view of Ausubel. Applicants respectfully traverse these rejections of Claims 17, 66 and 82 in view of at

least an additional ground supporting patentability for Claims 17, 66 and 82. More particularly, Sibley (in view of Ausubel) does not disclose or suggest a “default provider.”

It appears that the Examiner has assumed that a default provider (as a trader selling a commodity) is an obvious extension of Sibley’s method and system. However, Applicants respectfully submit that the default provider recited in Claims 17, 66, and 82 plays a very different role than the role played by traders selling commodities on established commodity exchanges.

An exemplary default provider of Claim 17, 66 or 82 may be characterized, for example, as a shortfall supplier supplying electric power or natural gas to one or more buyers in amounts sufficient to cover the difference, if any, between the quantities being supplied by the designated providers and the quantities needed for use by such buyer(s) (e.g., one or more resellers or end users, including end users who are customers of a reseller). For example, in the event that one or more energy providers (when their respective winning bids in the auction are summed) are designated to supply less than 100% of the electric power or natural gas needed for future use by an end user during a specific future time interval, a default provider can be utilized to supply the remaining energy needed by that end user during such timeframe. Sibley, on the other hand, describes a standard commodities trading environment in which discrete trades are made for specific quantities at specific prices.

For at least the reasons discussed above, Applicants respectfully traverse this rejection of Claims 17, 66 and 82 in view of at least this additional ground supporting patentability for Claims 17, 66 and 82.

**V. Remaining Rejections**

Applicants respectfully submit that any and all remaining rejections presented in the Office Action are believed to be moot, because Applicants respectfully submit that all pending claims are patentable at least by virtue of the arguments made above, and comments concerning the remaining rejections are thus believed to not be necessary. Applicants respectfully submit that it shall not be construed that Applicants acquiesce with any of the remaining rejections. Rather, Applicants reserve the right to argue the patentability of each claim on its own merit with respect to any and all rejections.

**VI. Other Remarks**

On page 2 of the Office Action under "Remarks," the Examiner advises the Applicants that, in view of a statement by the Applicants in their Remarks of October 22, 2007 (quoted on page 2 of the Office Action), the Examiner does not give patentable weight in Claim 1 (and, by implication, in Claims 20, 49, 68, 102, and 123) to the terms "first" and "second" and that, for the purposes of examination, the use of the phrases "a first portion of the plurality of energy Providers" and "a second portion of the plurality of energy Providers" are understood as merely "a portion of energy Providers." Applicants understand that no further response to the Examiner on this point is required of Applicants.



**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants respectfully request allowance of all pending claims, i.e., Claims 1-7, 9-25, 27-35, 49-57, 59-72, 74-95, and 97-130. Applicants thank the Examiner for his attention to this Application.

Respectfully submitted,

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